

**APPRAISER LICENSING AND CERTIFICATION BOARD
HEBER M. WELLS BUILDING
ROOM 2B
November 10, 2010
9:00 A.M.
TELEPHONIC MEETING**

MINUTES

STAFF MEMBERS PRESENT

Deanna Sabey, Division Director
Dee Johnson, Enforcement Director
Mark Fagergren, Education/Licensing Director
Jennie Jonsson, Hearing Officer
Renda Christensen, Board Secretary
Ken Wamsley, Investigator
Carla Westbroek, Appraisal Education/Licensing Specialist
Jill Childs, Assistant Board Secretary

BOARD MEMBERS PRESENT

Craig Morley, Chair
Paul Throndsen, Vice Chair
Debra Sjoblom, Board Member
Jeanette Payne, Board Member
Daniel Brammer, Board Member

GUESTS

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|---------------|---------------|
| Ryan Sedgwick | Vern Meyer |
| Dana Welch | Frank Clawson |
| Bill Lifferth | Debi Coburn |
| Niel Jensen | |

The November 10, 2010 meeting of the Appraiser Licensing and Certification Board began at 9:00 a.m. with Chair Morley conducting.

PLANNING AND ADMINISTRATIVE MATTERS

A motion was made to accept the Minutes from the October 27, 2010 meeting as written. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. Motion carries.

DIVISION REPORTS

DIRECTOR'S REPORT – Deanna Sabey

Director Sabey informed the Board that two appraiser investigators, Jim Bolton and Craig Livingston, are attending the second class that has been sponsored by the Appraisal Foundation, from a grant from the Appraisal Subcommittee, to sponsor more investigator training. The Appraisal Subcommittee is hoping they can find funding to put on a level three course. These two appraisal investigators have taken the first course, and this second course is being held from November 11 through November 13, 2010. This has proved to be a very

valuable experience for not only our investigators, but for state investigators throughout the country in being trained via this grant from the Appraisal Subcommittee. Nearly 200 investigators have taken this entry-level course, and over 100 will take the advanced course that our investigators are taking today. If the funding comes through, the third level course would focus on reporting the findings of an investigation and presenting them in an administrative hearing setting. Director Sabey wanted to thank both the Appraisal Foundation and the Appraisal Subcommittee for funding our investigators training in that regard.

The Federal Reserve has released the interim Financial Appraiser Independence Regulations. Even though this is a final interim rule, they are taking comments and it is scheduled to take effect on April 1, 2011. Compliance is optional until that time. This rule is particularly interesting because in the text it defines valuation as, not only an appraisal, but also including broker price opinions. Broker price opinions that are given for any consumer credit transaction that is secured by a principal dwelling will also be subject to appraiser independence and conflict of interest, of provisions that are set forth under this rule.

There are two ways being considered for applying this rule. First, it only applies to covered transactions and would include refinances and HELOCs, but does not include loan modifications. Second, the rule reviews the term “valuation” and states that anything that is a valuation for a covered transaction is covered under this rule. The term valuation is defined as meaning both appraisals and broker price opinions. If there is a circumstance where a real estate agent or other person who is providing a broker price opinion for a covered transaction, that person would be subject to conflict of interest rules, misrepresentation of value rules, no due influence rules would prohibit someone contacting the person performing the broker price opinion from pressuring the evaluator into a predetermined conclusion.

The rule also gives more clarification to the term “customary and reasonable compensation” service for the appraiser. It goes through some specific tests the lender or the lending agent would be able to apply to make sure that the fee being paid to the appraiser is a customary and reasonable fee. There is a two-step process for determining customary and reasonable rates. First, the creditor or its agent must identify the recent rates paid for comparable appraisal services in the relevant geographical market. Second, once the creditor or its agent has identified recent rates, the creditor or its agent must review certain factors that are listed and make any appropriate adjustments to those rates to make sure that the compensation is reasonable. An idea of what those kinds of factors are would include: scope of work; type of property; fee appraiser qualifications; fee appraiser experience and professional record; fee appraiser work quality.

The Division received a letter that had been originally received by the Attorney General’s office. The letter was dated September 30, 2010 but didn’t make it to the Division of Real Estate until November 3, 2010. This letter was from Valuation Partners and it requested information from the Attorney General’s office as to whether we would have fees or fee studies in our state, and if we would use those to enforce customary and reasonable fees. This request was in advance of the final rule that the Federal Reserve set forth. This request may not be as important to these folks now as it was on September 30, 2010. According to the interim rule, the compliance for the industry doesn’t take place until April 1, 2011. Director

Sabey is anticipating that we will have some dialogue with the Appraisal Subcommittee on how they would like to see states enforce this law.

ENFORCEMENT REPORT – Dee Johnson

Mr. Johnson said the appraiser investigators are doing a great job resolving and closing appraisal cases of late, and that is reflected in our report. He wanted to compliment all of them.

Mr. Johnson reported in October the Division received 17 complaints; screened 8 complaints; opened 6 cases; closed 14 cases; leaving the balance of appraisal cases at 75. The investigators are doing a great job of staying abreast of the screenings, but we do have a small backlog. It is reasonable, but it's there. Chair Morley asked for an explanation of the process investigators use to screen and close cases. Mr. Johnson said that about 47% of the screenings that are reviewed are turned down for different reasons (i.e., insufficient evidence, someone being mad at the appraiser, etc.). If there is a violation of statute, rules, or USPAP, then a case is opened to investigate.

EDUCATION AND LICENSING REPORT – Mark Fagergren

Mr. Fagergren said this is the second to last Board meeting of the year before two significant deadlines come into effect. There are 498 trainees who need to renew by the end of the year. As of today, we have received one application. As a reminder, we have sent a letter and a postcard reminder to the address of record for each of these trainees. A fair number of those came back with bad addresses, and if we got the new address, Ms. Westbroek sent notification to that address. The second deadline is the segmented applicant deadline that went into effect the first of 2008. All of their licensing must be completed by the end of the year. Considering that work samples must be sent out to be reviewed and then come back, the likelihood of that happening before December 8, 2010, is slim. At the end of the year the new educational components will be in place. Vice Chair Throndsen complimented Mr. Fagergren and his staff on being pro-active in getting information out to the trainees.

A number of years ago, we had an individual from the Cache Valley area, who came to a hearing and disputed his experience points. He was applying for certification and had never been licensed. He inspected thousands of homes, and he didn't ever really participate or complete appraisals, but he inspected a number of homes. The Board indicated that most of his experience did not qualify him to become a licensed appraiser. The Board voted to require appraisers in Utah to become licensed before they seek certification. We have an individual now who works in a bank here in town, and she does bank agricultural evaluations. All the experience she has turned in is these bank forms that are somewhat similar to an appraisal, but they are not an appraisal. Most of these properties are outside Utah, and she never inspects any of these properties. They are limited scope valuations, not required to be USPAP compliant, there is no certification of this analysis, and looking at that, we also have a rule that states that at least half of the experience an applicant claims to be in Utah. This is an unfortunate situation, and we wanted to bring this information to the Board. This person is hoping to meet the segmented deadline before the end of the year, and from our perspective, the experience doesn't meet the requirements. After some discussion on the matter, the Board agreed this application is deficient.

Mr. Fagergren presented the following list to the Board:

Certified and Licensed Appraiser Applicants Approved by both Education and Experience Review Committees:

Colby J. Bingham, LA Candidate
Cristina B. Earnshaw, LA Candidate
Lisa J. Black, LA Candidate
Preston B. Taylor, LA Candidate

Certified and Licensed Appraiser Applicants Approved by Education Review Committee and Denied by Experience Review Committee:

L. Scott Murray, LA Candidate
Matthew Zetterquist, LA Candidate
Jill Tucker-Staska, LA Candidate

Discipline List for Board's Consideration:

Steven H. Groll
John A. Kilpatrick

COMMISSION AND INDUSTRY ISSUES

Discussion: Update on Proposed Rules – Jennie Jonsson

Ms. Jonsson said there are no new updates on appraisal rules. In the meeting last month, it was determined to wait until a live meeting to look carefully at the public comments and discuss changes as to what we had proposed in our AMC rules and what has been through the public comment period. Because of the amount of time in getting the rule made effective, Ms. Jonsson has suggested the Board entertain a motion to accept the rule as written so it can be made effective. The motion was made and the vote was: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. The motion passes.

Ms. Dana Welch, Clear Capital, has given the Division a copy of the form they use for broker price opinions. The Board reviewed the document and thanked Ms. Welch for the information.

Discussion: Appraisal Price Opinions – Craig Morley

Chair Morley asked whether an appraiser is developing a price opinion would they have to comply with USPAP ethical standards, with USPAP development reporting standards. Vice Chair Throndsen said the Appraisal Institute is trying to design these forms that meet the minimum of USPAP so appraisers can work in that arena. They will be held to Standards 1 and 2 in developing appropriate analysis and reporting. Appraisers can't divorce themselves from their skill sets to do this type of work; therefore, they can't divorce themselves from having to meet USPAP standards.

Mr. Johnson said the Division has been contacted by appraisers who want to do a BPO. The people who have contacted us are appraisers who are also real estate licensees, and what they are saying is that they want to ignore the appraiser license or certification, and do a BPO as a real estate licensee. The answer is no, they can not do that. If someone who has an appraiser license gives a valuation, it's an appraisal. And if they do an appraisal, they have to obey the state statutes and USPAP. They want to be a competitive instrument so they can compete

against BPOs, but in the Appraisal statute there is just this one exemption for real estate licensees. The Division can't allow an appraiser to cut a hole in their own statute. An appraiser who does a BPO or APO has done an appraisal.

Chair Morley would like to hear from the Attorney General's office as to whether there is a difference between a price opinion and an opinion of market value. He would like to see some further clarification on these issues as written in the statutes.

Mr. Fagergren addressed the issue of individuals who have been approved by the Board to sit for an exam, but they haven't passed the test. After the first of the year the individual will have to reapply. If the person reapplies, will he or she have to be reevaluated, with new work samples, etc., or just use the evaluations previously done? Mr. Fagergren asked what a time limit would be on resubmitting an application. Experience is good for five years from when you resubmit. If the application comes in three years from now, then we can only count the experience in the last two years.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. The motion carries. Executive Session was held from 10:47 a.m. to 11:06 a.m.

CLOSED TO PUBLIC

Consideration and Review of Lists

OPEN TO PUBLIC

The Board agreed with the Committee on their decisions:

Certified and Licensed Appraiser Applicants **Approved** by both Education and Experience Review Committees:

- Colby J. Bingham, LA Candidate
- Cristina B. Earnshaw, LA Candidate
- Lisa J. Black, LA Candidate
- Preston B. Taylor, LA Candidate

Certified and Licensed Appraiser Applicants Approved by Education Review Committee and **Denied** by Experience Review Committee:

- L. Scott Murray, LA Candidate
- Matthew Zetterquist, LA Candidate
- Jill Tucker-Staska, LA Candidate

Discipline List for Board's Consideration:

- Steven H. Groll - Approved
- John A. Kilpatrick – Ms. Jonsson will write an Order on the Board's decision.

A motion was made to adjourn the meeting. Vote: Chair Morley, yes; Vice Chair Throndsen, yes; Board Member Sjoblom, yes; Board Member Payne, yes; Board Member Brammer, yes. The motion carries. The meeting adjourned at 11:33 a.m.